



Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

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# Developments in Access to Justice: Remuneration

## 1 Introduction

This paper deals with developments relating to fees for lawyers and expert witnesses in court proceedings. This is the fifth paper in a series of papers on developments in access to justice. The first three papers dealt with eligibility and scope of legal aid and the fourth paper considered alternatives to court proceedings. This paper considers recent developments in reducing legal aid costs by reducing fees for counsel in criminal cases. The paper also deals with issues arising from the Access to Justice Review, the Ministry of Justice Green paper on Proposals for the Reform of Legal Aid in England and Wales, and the House of Commons Justice Select Committee report on the government's proposed reforms. The paper also considers developments in remuneration for legal professionals in the Republic of Ireland.

## 2 Northern Ireland

### 2.1 Recent developments in Northern Ireland- Crown Court Remuneration

Rules for remuneration of solicitors and barristers working on legal aid cases are set out in the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005, known as the 2005 rules. Proposals have been published to set out changes to the 2005 rules in relation to how the legal profession is remunerated for services in the Crown Court. Officials from the NICTS identified Crown Court remuneration as the area where the biggest savings could be made, anticipated to be £16 million.<sup>1</sup>

It was proposed in the NICTS September 2010 consultation that there would be a 30% reduction in standard fees payable to solicitors and a 20% reduction in standard fees payable to counsel.

The Bar argued that the proposed 20% cut was too high and proposed a 10% reduction which was not accepted.<sup>2</sup> It has been noted that keeping the counsel reduction at 20% will leave the Bar's remuneration at 10% higher than in England and Wales.<sup>3</sup> Solicitors expressed concern at the impact that the 30% cut would have on solicitors' firms and suggested a 5% to 10% reduction. The Minister accepted that there would be an impact on solicitor's firms in terms of employment and adjusted the proposed reduction to standard fees payable to solicitors to 25%.<sup>4</sup>

Very High Cost Cases (VHCC) would no longer be a separate category and would come under standard fees arrangements.<sup>5</sup> The consultation highlighted that more VHCCs were being certified than anticipated, at an average of 55 per year in contrast to 5 anticipated cases.<sup>6</sup> The new scheme includes an extension of the tables of standard fees to cover trials lasting beyond 25 days and up to and including 80 days. It is anticipated that few trials will last longer than 80 days. However it has been proposed in cases that run over 80 days that the Legal Services Commission will have regard to the following: the basic trial fee and refresher fee payable for trials lasting between 72 and 80 days; additional fees payable under schedule 1 of the amended rules; and records provided by legal representatives in support of any additional work claimed.<sup>7</sup> The proposals also included, in cases of early guilty pleas, that the fees would be modified by introducing an element referring to the number of pages of public prosecution evidence.<sup>8</sup>

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<sup>1</sup> Evidence from NICTS officials, Committee for Justice Official Report Crown Court Remuneration, 7 December 2010

<sup>2</sup> Evidence from NICTS officials, Committee for Justice Official Report Crown Court Remuneration, 7 December 2010

<sup>3</sup> Evidence from NICTS officials, Committee for Justice Official Report Crown Court Remuneration, 7 December 2010

<sup>4</sup> Evidence from NICTS officials, Committee for Justice Official Report Crown Court Remuneration, 7 December 2010,3.

<sup>5</sup> Remuneration of Defence Representation in the Crown Court Consultation Document (September 2010),9

<sup>6</sup> Remuneration of Defence Representation in the Crown Court: Consultation Document (September 2010),4

<sup>7</sup> Remuneration of Defence Representation in the Crown Court: Consultation Document (September 2010),10

<sup>8</sup> Remuneration of Defence Representation in the Crown Court: Consultation Document (September 2010),3.

The Justice Minister announced on 23 March 2011 that new regulations would be laid before the Assembly to bring these changes into effect.<sup>9</sup> The new rules came into effect on 13 April 2011 and although these rules remove VHCCs, the rules only apply to work done under a criminal legal aid certificate granted on or after this date.<sup>10</sup> VHCCs certified prior to this will be assessed under the old rules.<sup>11</sup> The NIAO whilst recommending the changes to VHCCs recommended that the Court Service regularly reviews the new remuneration scheme to make sure it is fit for purpose and represents value for money.<sup>12</sup>

It was reported as a result of the new rule, that ‘hundreds’ of solicitors are withdrawing their services in serious criminal cases.<sup>13</sup> On 9 June, in evidence to the Justice Committee, the Director of the Northern Ireland Courts and Tribunals Service acknowledged that 78 firms have come off record and 160 cases have been affected to date.<sup>14</sup> It was reported that the Minister may face a legal challenge over these changes and that a pre action letter has been sent to the Department of Justice.<sup>15</sup> The Chief Commissioner of the Northern Ireland Human Rights Commission (NIHRC) had expressed concerns regarding the impact of the row over legal aid fees as there are an increasing number of defendants awaiting trial in criminal cases including remand prisoners who have no legal representation.<sup>16</sup> The Justice Minister indicated that to ensure representation was available that he may have to consider alternative arrangements, including inviting solicitors or barristers from outside Northern Ireland to undertake work or to commence powers available in the Access to Justice (Northern Ireland) Order 2003 which would allow the Legal Services Commission to directly engage services of solicitors and barristers. This option is similar to arrangements in England and Wales and Scotland where the legislation provides for the public defender system that exists there.<sup>17</sup> It was reported that solicitors are to resume legal aid work. However there are no changes to legal aid terms but was reported that the Department is considering some minor additional payments not initially included in the original terms.<sup>18</sup> The Minister for Justice has confirmed that the withdrawal action has now ended and that the contingency plans that were being developed are now not necessary.<sup>19</sup>

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<sup>9</sup> The Legal Aid for Crown Court (Costs) (Amendments) Rules (Northern Ireland) 2011

<sup>10</sup> The Northern Ireland Audit Office “Managing Criminal Legal Aid” 29 June 2011, 24

<sup>11</sup> The Northern Ireland Audit Office “Managing Criminal Legal Aid” 29 June 2011, 33

<sup>12</sup> The Northern Ireland Audit Office “Managing Criminal Legal Aid” 29 June 2011, 30

<sup>13</sup> Belfast Telegraph “Lawyers withdraw services in protest at payment cuts”, Tuesday 19<sup>th</sup> April 2011

<sup>14</sup> Evidence to the Justice Committee, 9 June 2011

<sup>15</sup> Belfast Telegraph “Legal aid fees fight may go to court”, Thursday 5 May 2011.

<sup>16</sup> Irish News “69 Practices in dispute over case fees” 1 June 2011

<sup>17</sup> Committee for Justice Official Report “Legal Aid Dispute” 23 June 2011, 4-5,

<sup>18</sup> BBC News “Striking Solicitors to resume ‘normal work’” 19 August 2011, <http://www.bbc.co.uk/news/uk-northern-ireland-14586903>

<sup>19</sup> Official Report of the Northern Ireland Assembly, 13 September 2011, 75.  
<http://www.niassembly.gov.uk/record/reports2011/110913.pdf>

## 2.2 Reform of legal representation provided by legal aid at the Crown Court

In 2009, the Northern Ireland Courts and Tribunals Service published proposals setting out criteria to determine when legal aid would pay for two or more counsel.<sup>20</sup> These criteria would be introduced in the form of subordinate legislation.<sup>21</sup> The draft rules set out that a criminal aid certificate may provide for the services of more than one counsel including: either one Queen's Counsel with a junior counsel; or two junior counsel.<sup>22</sup> The proposed criteria for the granting of a certificate for two or more counsel include: in cases involving complex issues of law; in exceptional cases compared with other cases involving similar offences; and in cases where two or more counsel (either a Queen's Counsel or two junior counsel) has been instructed on behalf of the prosecution and the number of prosecution witnesses exceeds 80 or the number of pages of prosecution evidence exceeds 1000.<sup>23</sup>

Concerns were raised by the Bar Council during evidence to the Justice Committee that they would not like to see a disparity of representation of counsel between the courts such as High Courts and the Crown Court as two or more counsel regularly appear in the High Court.<sup>24</sup>

The proposals also seek to give the responsibility for the decision to assign more than one counsel to the Crown Court, removing this responsibility from the magistrate's courts.<sup>25</sup> The NICS consultation paper comments that, due to differences in legislation, proportionately more defendants at the Crown Court in Northern Ireland are represented by two counsel than in England and Wales.<sup>26</sup> In Northern Ireland, 58% of indictable offences had two counsel assigned in comparison to 5% in England and Wales.<sup>27</sup> The Bar Council commented in evidence to the Justice Committee that they would be in favour of district judges retaining the opportunity to certify for two or more counsel for two main reasons: first, the district judge is fully aware of all the facts of the case; and second, the Council was concerned that lack of certification would lead to delay.<sup>28</sup> The Northern Ireland Audit Office reported that a formal departmental response to the consultation has not yet been given.<sup>29</sup>

<sup>20</sup> Northern Ireland Courts Service Consultation document: Reform of legal representation provided by way of criminal legal aid at the Crown Court (August 2009).

<sup>21</sup> See Draft Criminal Aid Certificate Rules (Northern Ireland) 2010, available at [http://www.courtsni.gov.uk/en-GB/Publications/Public\\_Consultation/p\\_pc\\_Reform\\_Criminal\\_LA\\_CrownCourt\\_Consultation.htm](http://www.courtsni.gov.uk/en-GB/Publications/Public_Consultation/p_pc_Reform_Criminal_LA_CrownCourt_Consultation.htm)

<sup>22</sup> The Criminal Aid Certificate Rules (Northern Ireland) 2010, clause 4.

<sup>23</sup> The Criminal Aid Certificate Rules (Northern Ireland) 2010, clause 4 (6) and 4 (7).

<sup>24</sup> Committee for Justice Official Report, Evidence with Representatives of the Bar Council on Legal Aid Reform, 17 June 2010.

<sup>25</sup> Northern Ireland Courts Service Consultation document: Reform of legal representation provided by way of criminal legal aid (August 2009), 17.

<sup>26</sup> Northern Ireland Courts Service Consultation document: Reform of legal representation provided by way of criminal legal aid (August 2009), 4.

<sup>27</sup> Northern Ireland Courts Service Consultation Document Reform of legal representation provided by way of criminal legal aid (August 2009)

<sup>28</sup> Committee for Justice Official Report, Evidence with Representatives of the Bar Council on Legal Aid Reform, 17 June 2010.

<sup>29</sup> Northern Ireland Audit Office "Managing Criminal Legal Aid" June 2011, 21. [http://www.niauditoffice.gov.uk/pubs/2011/legal\\_aid/8935\\_Legal\\_aid\\_final.pdf](http://www.niauditoffice.gov.uk/pubs/2011/legal_aid/8935_Legal_aid_final.pdf)

## 2.3 Access to Justice Review

### Principles to inform approach in determining remuneration

The Review Team indicated that it was interested in obtaining views on the principles that underlie a fair and affordable approach to remuneration in the current financial climate in which public services are operating in which could include:<sup>30</sup>

- reasonable but not excessive remuneration taking account of what solicitors and barristers might expect to earn if they worked full time on criminal legal aid cases;
- broad comparability with remuneration in other jurisdictions and with that paid by the Public Prosecution Service;
- the need to attract quality and expertise of representation at the highest levels and sustain supply into the future;
- where possible standard fees that are straightforward to administer and incentivise efficient practices;and
- affordability.

In the final report, the Review Team has elaborated on these principles to take account of the civil context which add the following to the principles outlined above.<sup>31</sup>

- remuneration mechanisms that are straightforward to administer in a way that support prompts payment;
- Mechanisms that enable verification that bills are paid properly and that work to which they relate has been carried out to the requisite standard.

### Remuneration in criminal cases

In its final report, the Review Team recommended that the 2011 rules and implications for access to justice should be reviewed as soon as sufficient numbers and a representative mix of cases have passed through the system to make a review meaningful.<sup>32</sup> The Review Team states ‘it would not be right to make further cuts to remuneration without at least awaiting the outcome of a review of the workings of the new arrangements.’<sup>33</sup>

The Review Team also considered the proposals for the reform of arrangements for criminal aid certificate may provide for the services of two counsel. They do not comment on the detail of the proposals but suggest that the new regulations would have to be precise if it is to have the intended effect of limiting the assignment of two counsel to exceptional Crown Court cases where they are need to ensure effective representation and equality of arms.<sup>34</sup>

<sup>30</sup> Access to Justice Review Discussion Document, November 2010,9.

<sup>31</sup> Access to Justice Review Northern Ireland ‘The Report’, August 2011, 38.

<sup>32</sup> Access to Justice Review Northern Ireland ‘The Report’, August 2011, 37.

<sup>33</sup> Access to Justice Review Northern Ireland ‘The Report’, August 2011, 135

<sup>34</sup> Access to Justice Review Northern Ireland ‘The Report’, August 2011,38

Another issue considered is the issue of fees in early guilty pleas. The Review Team highlight that standard fees are paid at different levels depending on whether there is a contest, a plea of guilty before the case has been listed for trial (guilty plea 1) or a plea after listing but before the trial (guilty plea 2).<sup>35</sup> The Review Team reported that it was suggested to them that a standard fee replacing these fees such as is the case in Scotland should be considered. A standard fee would be payable whether or not there is a contest or a plea and would focus minds earlier on the question of plea and discourage prolonging a case before a plea is entered.<sup>36</sup> The Review Team has recommended that research is carried out as a matter of urgency on the case for and against introducing a single fee and that pending the outcome of the research that the three levels of fee should be retained, provided the differential between them reflects fairly the amount of work involved.<sup>37</sup>

It was suggested to the Review Team that defendants could be required to pay a small upfront fee in all cases where they seek legal aid but it was concluded that the amount that might be collected 'would make this a disproportionate measure.'<sup>38</sup>

### **Remuneration in Family and Children Civil Cases**

Another area identified by the Review Team is remuneration and costs to the legal aid fund in Children Order public and private law cases. It is reported that legal aid spend on representation in family and children cases in 2010/11 accounted for about £26 million of £36.9 million spent on representation in civil courts.<sup>39</sup> The Review has noted that the Northern Ireland Legal Services Commission is arranging a review of fees paid to solicitors and barristers at all tiers of court in private and family law cases.<sup>40</sup> The Review Team suggests that this review of fees is an opportunity to develop a system of standard fees in family and children cases that is coherent and applies consistent principles across court tiers.<sup>41</sup> It is recommended that the review should also consider costs capping for Family Proceedings cases or other ways of ensuring costs do not reach excessive levels at the Family Proceedings Court level. The Review Team concludes that that it is inevitable that there will have to be some reduction in average payments for particular categories of family work if £5m is to be saved from the projected budget for civil legal aid by 2014/15.<sup>42</sup>

### **Remuneration in non -family civil cases**

It has been reported that in 2010/11, £13.6 million (including VAT) was paid to solicitors in respect of representation in civil cases at county court level of £4.4 million was for

<sup>35</sup> Access to Justice Review Northern Ireland 'The Report', August 2011,41

<sup>36</sup> Access to Justice Review Northern Ireland 'The Report', August 2011,41

<sup>37</sup> Access to Justice Review Northern Ireland 'The Report', August 2011,42

<sup>38</sup> Access to Justice Review Northern Ireland 'The Report', August 2011,43

<sup>39</sup> Access to Justice Review Northern Ireland "The Report", August 2011, 69

<sup>40</sup> Access to Justice Review Northern Ireland "The Report" August 2011, 78

<sup>41</sup> Access to Justice Review Northern Ireland "The Report" August 2011, 78

<sup>42</sup> Access to Justice Review Northern Ireland "The Report" August 2011, 78

non-family cases. Figures for counsel were £8.93 million and £2.86 million respectively.<sup>43</sup> The Access to Justice Review Team notes proposals in England and Wales to reduce all civil fees, including codified barristers rates by 10%. The Review Team suggests that it may prove necessary to identify a percentage figure by which overall remuneration will have to be reduced in Northern Ireland, depending on the outcome of financial modelling of other proposals. However it has been suggested that if it is necessary to aim for a quantified figure that this should be done examining each area of work on its merits rather than by seeking a blanket across the board reduction.<sup>44</sup>

### **Remuneration of Expert Witnesses**

The Access to Justice Review notes that they do not have discrete financial information on the costs of expert witnesses to the legal aid fund in Northern Ireland. However it is estimated in England and Wales, that expert witnesses cost around two thirds of the expenses charged by solicitors. The Review Team suggests that if this is translated to Northern Ireland that the costs of expert witnesses to the civil courts might cost 2-3 million per annum. Furthermore there is the cost of experts in the criminal courts to consider.<sup>45</sup>

The Review Team recommend that the Department of Justice allocates a dedicated resource to the development and implementation of a strategy for securing expert witness evidence for the court that secures value for money and consulting with appropriate stakeholders.<sup>46</sup> This will address:<sup>47</sup>

- The process for identifying the need for expert witnesses and by which experts are appointed;
- A Framework of fixed fees to be paid for experts in publicly funded cases, taking into account market conditions and fee levels set in England and Wales;
- Arrangements for remunerating experts in a timely fashion;
- The development of registers of suitably qualified experts- working with the Law Society and other jurisdictions;
- The use of videolinks, IT and written reports to reduce costs associated with securing expert evidence from outside NI;
- Liaising with the UK and ROI to develop complementary systems and policies;
- The recoverability of the costs of experts as between the parties and ensuring the legal aid fund is not unduly exposed.

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<sup>43</sup> Access to Justice Review Northern Ireland "The Report" August 2011, 97

<sup>44</sup> Access to Justice Review Northern Ireland "The Report" August 2011, 99

<sup>45</sup> Access to Justice Review Northern Ireland "The Report" August 2011, 99

<sup>46</sup> Access to Justice Review Northern Ireland "The Report" August 2011, 100

<sup>47</sup> Access to Justice Review Northern Ireland "The Report" August 2011, 100-101.

### 3 Developments in England and Wales

As part of its consultation on the legal aid system, the Ministry of Justice's consultation paper addresses questions of remuneration, specifically in criminal cases, civil cases and for expert witnesses.

#### 3.1 Criminal cases

In developments in England and Wales, the Government believes that the system of fees in criminal law cases has become over complex and it is necessary to reform the system rather than simply introducing an across the board reduction.<sup>48</sup> In particular the Government believes that too many 'either way' cases (cases that could be tried either summarily in the magistrates courts or in the Crown Court) are being heard in more expensive Crown Court proceedings, even though the sentences subsequently handed down suggest the magistrates courts would have been suitable.<sup>49</sup> The fees paid for representation in Magistrate's courts (Magistrates' Courts Standard Fee System) is lower than the fees paid for Crown Court work under the Litigators' Graduated Fee Scheme and the Advocates' GFS (litigators manage the case while advocates speak on behalf of the client in court).<sup>50</sup>

The Government proposes to reform the fee system for cases where a magistrate said the case could be dealt with summarily but the defendant opted for a jury trial and yet later pleaded guilty in the Crown Court.<sup>51</sup> The proposal is for a standard fixed fee in the Crown Court in such cases, with no separate fee for an advocate; this would be complemented by increased fees paid in magistrates' courts.<sup>52</sup> This proposal is limited to a specific type of case and would standardise somewhat the approach taken in the Magistrates' courts and the Crown Court.

The Government also has proposals for cases of guilty pleas in indictable only offences or cases where the magistrate has declined to hear the case. Here the Government is concerned that a fee is paid for a guilty plea at an early stage (before or at the Plea and Case Management Hearing (PCM)) but a higher fee is paid for a guilty plea in a so called cracked trial, where the guilty plea comes after the PCM Hearing but before the actual start of the trial. The Government believes that insufficient work is done during this period of a case to justify a higher fee.<sup>53</sup> The Government proposes that the same fee should be paid for a guilty plea at any stage, proposing a somewhat higher fee than currently paid at the earlier stage.<sup>54</sup> This proposal is based on similar concerns to what which motivate the Access to Justice Review to suggest looking at the Scottish model

<sup>48</sup> Ministry of Justice "Proposals for the Reform of Legal Aid in England and Wales", November 2010,102

<sup>49</sup> Ministry of Justice "Proposals for the Reform of Legal Aid in England and Wales", November 2010,103.

<sup>50</sup> Ministry of Justice "Proposals for the Reform of Legal Aid in England and Wales", November 2010,103.

<sup>51</sup> Ministry of Justice "Proposals for the Reform of Legal Aid in England and Wales", November 2010,104.

<sup>52</sup> Ministry of Justice "Proposals for the Reform of Legal Aid in England and Wales", November 2010,104.

<sup>53</sup> Ministry of Justice "Proposals for the Reform of Legal Aid in England and Wales", November 2010,105.

<sup>54</sup> Ministry of Justice "Proposals for the Reform of Legal Aid in England and Wales", November 2010,105-106.



of having one fee whether there is a contest, a guilty plea before listing or a guilty plea after listing but before trial.

The Government also notes that higher fees are paid in murder and manslaughter cases than in other serious crimes (eg rape). It proposes to harmonise the fees in the former cases with the latter.<sup>55</sup> It is worth noting that the fees paid in respect of similar cases in Northern Ireland are higher than those paid in respect of other serious offences.<sup>56</sup>

The Government also proposes to reduce the number of categories based on the value of dishonest acts; it believes that the number of pages of prosecution evidence is a more reliable indicator of the complexity of a case than the value of the dishonest act.<sup>57</sup> In Northern Ireland some dishonesty offences attract different fees based on value.<sup>58</sup>

The Government also proposes to do away with the additional payments for London magistrates' cases<sup>59</sup> and to reduce by 50% certain ancillary payments for specific acts (called 'bolt ons').<sup>60</sup> The Government notes also that the previous Government reformed how Very High Cost Criminal Cases were considered: the previous Government reduced the number of cases that would be considered VHCCC for advocates but not litigators. As regards advocates only cases estimated to last longer than 60 days would count as VHCCC. The Government proposes to harmonise these.<sup>61</sup> The Government also wants to consider appointing an independent assessor to consider what cases should be treated as VHCCC.

The Government is also proposing to change the rules regarding when two counsel will be provided. Specifically it wants to amend the rule regarding the number of pages of prosecution evidence which is one of the criteria for deciding whether two counsel should be appointed, increasing the number from 1000 to 1500.<sup>62</sup> As noted above the NICTS proposes that this last criterion should be 1000 pages in Northern Ireland.

### 3.2 Civil Cases

In civil cases, the Government is proposing an across the board 10% reduction in most fees.<sup>63</sup> The House of Commons Justice Select Committee heard evidence that the

<sup>55</sup> Ministry of Justice "Proposals for the Reform of Legal Aid in England and Wales", November 2010 107.

<sup>56</sup> The Legal Aid for Crown Court Proceedings (Costs) (Amendment ) Rules (Northern Ireland ) 2011 <http://www.courtsni.gov.uk/NR/rdonlyres/CCB4C29D-80AF-4B99-894E-D3F44DC53CEA/0/TheLegalAidforCrownCourtProceedingsCostsAmendmentRulesNorthernIreland2011SR2011.pdf>

<sup>57</sup> Ministry of Justice "Proposals for the Reform of Legal Aid in England and Wales", November 2010, 108.

<sup>58</sup> The Legal Aid for Crown Court Proceedings (Costs) (Amendment) Rules (Northern Ireland) 2011 section 20 [http://www.legislation.gov.uk/nisr/2011/152/pdfs/nisr\\_20110152\\_en.pdf](http://www.legislation.gov.uk/nisr/2011/152/pdfs/nisr_20110152_en.pdf)

<sup>59</sup> Ministry of Justice "Proposals for the Reform of Legal Aid in England and Wales", November 2010, 108.

<sup>60</sup> Ministry of Justice "Proposals for the Reform of Legal Aid in England and Wales", November 2010, 109.

<sup>61</sup> Ministry of Justice "Proposals for the Reform of Legal Aid in England and Wales", November 2010, 110-111.

<sup>62</sup> Ministry of Justice "Proposals for the Reform of Legal Aid in England and Wales", November 2010, 112.

<sup>63</sup> Ministry of Justice "Proposals for the Reform of Legal Aid in England and Wales", November 2010 , 117.

10% reduction in fees in civil and family matters would be a contributory factor in the decision of providers withdrawing from the market and with consequent adverse on clients.<sup>64</sup> In response, the Committee stated that “We do not underestimate the difficult the difficult situation faced by many legal providers.” However the Committee concluded that given the savings the Ministry of Justice has to make, that it was correct to reduce fees rather than make further changes to the scope of legal aid.<sup>65</sup>

The Government makes a number of other proposals in respect of civil cases including:

- To reform the ‘caps’ on enhanced payments payable in certain circumstances;<sup>66</sup>
- To make greater use of ‘risk rates’, i.e. rates paid in cases where the counsel may have the expectation that their costs would be paid by the losing side;<sup>67</sup>
- To reduce the circumstances where an expensive Queen’s Counsel would be authorised in a family law case.<sup>68</sup>

### 3.3 Expert Fees

At the moment there is no separate system for recording these fees or harmonised system for determining what they should be; they are simply paid to the counsel as expenses. The Government proposes to develop plans for a fee system; in the meantime there should be a 10% reduction in rates.<sup>69</sup>

## 4 Developments in the Republic of Ireland

The Department of Justice and Equality in the Republic of Ireland has taken a different approach to that proposed by the Ministry of Justice in England and Wales. There has been a phased approach to reduction in criminal legal aid fees. In July 2011, the Department of Justice and Equality introduced regulations imposing a 10% reduction in criminal legal aid fees.<sup>70</sup> The rates payable under the criminal legal aid scheme have decreased in each of the last three years. In 2009, rates were reduced by 10.5% in 2009 and 8% in 2010.<sup>71</sup> The regulations apply to fees payable to solicitors and counsel under the criminal legal aid scheme for appearances in the District Court and for appeal to the Circuit Court. The decrease applies to fees payable for essential visits to prisons, other custodial centres and bail applications. The reduction also applies to fees payable under the Ad-Hoc Garda Station, CAB schemes professionals engaged

<sup>64</sup> House of Commons Justice Select Committee “Government’s Proposed Reform of Legal Aid” Third Report of Session 2010-2011, 23

<sup>65</sup> House of Commons Justice Select Committee “Government’s Proposed Reform of Legal Aid” Third Report of Session 2010-2011, 24

<sup>66</sup> Ministry of Justice “Proposals for the Reform of Legal Aid in England and Wales”, November 2010, 117-118.

<sup>67</sup> Ministry of Justice “Proposals for the Reform of Legal Aid in England and Wales”, November 2010, 119-121.

<sup>68</sup> Ministry of Justice “Proposals for the Reform of Legal Aid in England and Wales”, November 2010, 123.

<sup>69</sup> Ministry of Justice “Proposals for the Reform of Legal Aid in England and Wales”, November 2010, 128.

<sup>70</sup> Criminal Justice (Legal Aid) (Amendment) Regulations 2011

<sup>71</sup> Department of Justice and Equality press release 14 July 2011.

by the defence as expert witnesses and individuals providing translation or interpretation services.<sup>72</sup>

The Department has also introduced regulations which impose a 10% reduction in fees for appearances in proceedings under the Enforcement of Court Orders Act 1940 where a legal aid certificate has been granted by the court.<sup>73</sup>

## 5 Conclusion

There have been a number of recent developments regarding remuneration of the legal profession in Northern Ireland including reducing standard fees payable to solicitors and barristers in Crown Court cases and proposals setting out rules determining when legal aid will pay for two or more counsel at the Crown Court. The Review Team concluded that there should not be further cuts to remuneration without at least awaiting the outcome of a review of the workings of the new arrangements.

The Access to Justice Review Team recommends research on introducing a standard fee in criminal cases whether there is a context, a guilty plea before or after listing. The Team also suggests looking at the fees in family and children cases. The Team notes the across the board reduction to civil fees in England and Wales, but suggests looking at each area on its merits rather than applying a blanket approach. The Access to Justice Review Team recommends the Department develop a scheme addressing expert witnesses.

In England and Wales, there are a number of proposals on remuneration outlined by the Government in its Green Paper:

- **Reducing remuneration of expert witnesses-** In England and Wales it is proposed that plans will be developed for a fee system, however in the meantime, it is proposed there should be a 10% reduction in rates;
- In **civil cases**, the Government is proposing an across the board **10% reduction** most fees;
- In criminal cases **harmonising fees in murder and manslaughter cases with other serious cases such as rape**;

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<sup>72</sup> Department of Justice and Equality press release 14 July 2011.

<sup>73</sup> Enforcement of Court Orders (Legal Aid) (Regulations) 2011

- **Fees in dishonesty cases.** In England and Wales it is proposed to reduce the number of categories where remuneration is based on the value involved in dishonesty cases.

In the Republic of Ireland, the Department of Justice and Equality has taken a phased approach to reducing rates payable under the criminal legal aid scheme. Regulations were introduced and came into force in July 2011 to impose a 10% reduction in fees payable to solicitors and counsel. In 2009 rates were reduced by 10.5% and by 8% in 2010. Regulations have also been introduced which impose a 10% reduction in fees for appearances in proceedings under the Enforcement of Court Orders Act 1940 where a legal aid certificate has been granted by the court